

REMARKS

Pending claims 1-7 and 9-11 have been cancelled without prejudice or disclaimer by this amendment. New claims 23-32 have been added for consideration by the Examiner.

In the Office Action mailed December 8, 2003, the Examiner rejected claims 9-11 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 14, 19, and 22-24 of U.S. Patent No. 6,137,840 in view of English et al. (U.S. Patent No. 5,528,593). The Examiner alleges that U.S. Patent No. 6,137,840 discloses in claims 1, 14, 19, and 22-24 every feature of the claimed invention, but does not explicitly teach a variable data source means for providing the variable rate data frames and the frame rate signal. The Examiner then alleges that the patent to English discloses a variable data source means for providing the variable rate data frames and the frame rate signal. The Examiner then concludes that it would have been obvious to incorporate the teaching of English into U.S. Patent 6,137,840 to generate the desired amount of data signal to be transmitted to the selected remote station. Applicants respectfully submit that this obviousness-type double patenting rejection set forth by the Examiner is now deemed moot in view of the cancellation of claims 9-11.

The Examiner rejected claims 1-7 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains to make and/or use the invention. Specifically, the Examiner alleges that the specification does not provide adequate support for the limitations of claim 1 "if the error information indicates a random fade condition, then reducing the transmission power at a first predetermined rate for a first predetermined time period ... if the error information indicates a genuine fade condition, maintaining the transmission power at the level of the transmission power increase." While not necessarily acquiescing to this rejection set forth by the Examiner, in the interest in advancing the prosecution of the present application, Applicants have canceled claims 1-7 without prejudice or disclaimer. Accordingly, Applicants respectfully submit that the aforementioned rejection by the Examiner is now deemed moot in view of the cancellation of these claims.

The Examiner rejected claims 9-11 under 35 U.S.C. §103(a) as being unpatentable over Henriksson in view of English et al. (US 5,528,593). In the rejection, the Examiner alleges that

Henriksson discloses a method and apparatus having the capability of controlling transmission power of variable rate frames of data. The Examiner states that Henriksson fails to teach that the control processor determines a rate transmit power level and at least one additional transmit power level in accordance with the reference rate transmit power. The Examiner then relies on English for disclosing a method for controlling power in a variable rate communication system generating a reference rate transmit power level for a full rate transmission and at least one additional reference power level in accordance with the reference rate transmit power level. The Examiner then concludes that it would have been obvious to incorporate the teaching of English into Henriksson as it would provide the system with the capability to transmit the signal information at a different power level. Applicants respectfully submit, however, that this art rejection is now deemed moot in view of the cancellation of claims 9-11 without prejudice or disclaimer. Applicants further submit that neither Henriksson nor English teach to receive a frame quality message from a remote communication station; receive a gain adjustment value and a previous reference rate transmit value, and summing said gain adjustment value and said previous reference rate transmit value to provide a reference rate transmit power level; determine at least one additional transmit power level in accordance with said reference rate transmit power level and providing a transmit power signal based at least in part on said one additional transmit power level; and amplify said variable rate frames in accordance with said transmit power signal and a rate of said variable rate frames of data as is presented in newly submitted claims 23 and 28.

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicants submit that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application is earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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